## **United States Department of Labor Employees' Compensation Appeals Board**

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| D.Y., Appellant  | )                             |
| and  | ) Docket No. 11-1132          |
| U.S. POSTAL SERVICE, POST OFFICE,<br>Vancouver, WA, Employer                     | ) Issued: March 12, 2012<br>) |
| Appearances: Greg Dixon, for the appellant Office of Solicitor, for the Director | Case Submitted on the Record  |

## ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge ALEC J. KOROMILAS, Judge COLLEEN DUFFY KIKO, Judge

On April 6, 2011 appellant, through his representative, filed an application for review of the Office of Workers' Compensation Programs' decision dated February 7, 2011. In the February 7, 2011 decision, a hearing representative affirmed an OWCP decision dated June 7, 2010 which granted appellant a schedule award for 31 percent permanent impairment of the right leg.<sup>1</sup> The appeal was docketed as 11-1132.

On April 8, 2011 the Board served the Director of OWCP with a copy of the application for review and requested the Director to transmit the case records in OWCP File No. xxxxxx441 to the Board in accordance with the Board's *Rules of Procedure*.<sup>2</sup> On May 25, 2011 the Director forwarded the case record to the Board, which consisted of 248 imaged documents in File No. xxxxxx441 along with subsidiary claim files.

<sup>&</sup>lt;sup>1</sup> Appellant has prior work-related knee injuries including a motor vehicle injury which occurred on May 27, 1966 and was accepted for tenderness in the neck, left shoulder, left elbow and right knee, File No. xxxxxx251; on August 15, 1966, appellant sustained a right knee injury when he fell down steps which was accepted for tear of the medial meniscus of the right knee and underwent authorized arthrotomy and medial meniscectomy of the right knee on April 17, 1967 and November 24, 1967, File No. xxxxxx200; and on August 13, 1967, appellant injured his right knee when exiting a mail truck which was accepted for sore right knee, File No. xxxxxx392. These claims were consolidated with the current claim before the Board.

<sup>&</sup>lt;sup>2</sup> 20 C.F.R. § 501.4.

The Board has duly considered the matter and notes that the Director has not forwarded the complete contents of appellant's case record for review by the Board. OWCP accepted appellant's claim for arthritis of the right knee and authorized a total right knee replacement which was performed by Dr. David A. Cortese on February 6, 2009. On February 16, 2010 appellant filed a claim for schedule award. He submitted April 19 and April 26, 2010 reports from Dr. Donald Tilson who reviewed Dr. Cortese's February 6, 2009 surgical report and opined that appellant had 59 percent left leg impairment. In a May 11, 2010 report, an OWCP medical adviser opined that appellant had 31 percent permanent impairment of the right leg. The medical adviser noted that appellant underwent a total knee replacement on February 6, 2009 and classified appellant's impairment based on a total knee replacement. On June 7, 2010 OWCP found that appellant had 31 percent impairment of the right leg. As appellant previously received a schedule award for 16 percent impairment of that leg, he was entitled to an additional schedule award for 15 percent impairment based on the February 6, 2009 total right knee replacement. On February 7, 2011 a hearing representative affirmed OWCP's decision. The hearing representative noted the February 6, 2009 total knee replacement and noted that appellant was granted a schedule award based on the knee replacement and poor results from the surgery. However, the record transmitted to the Board does not include, inter alia, Dr. Cortese's February 6, 2009 operative report which is one of the bases of OWCP's impairment determination. The Board, therefore, finds that the appeal docketed as No. 11-1132 is not in posture for a decision as the Board is unable to render an informed adjudication of the case. The case must be remanded to OWCP for reconstruction and proper assemblage of the case record and an appropriate merit decision issued on appellant's claim in order to preserve his appeal rights.

**IT IS HEREBY ORDERED THAT** the February 7, 2011 Office of Workers' Compensation Programs' decision in appeal No. 11-1132 be set aside and the case remanded for further action consistent with this order of the Board.

Issued: March 12, 2012 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board